SUBSCRIPTIONS — SUBSCRIPTIONS FOR CHARITABLE OBJECTS — ENFORCEABILITY OF PLEDGE TO COMMUNITY WAR CHEST. — Plaintiff, a local organization for the efficient collection and distribution of war charities, sues to enforce defendant's pledge to it. *Held*, that the verdict be directed for plaintiff. *Mechanicville War Chest* v. *Ryan*, 181 N. Y. Supp. 576.

Charitable subscriptions are enforced at law by the great weight of authority but on various analytically unsound grounds. See 1 WILLISTON, CONTRACTS, §§ 116, 377; 15 HARV. L. REV. 312. The most common device is to hold the subscription an offer, accepted by incurring liability in reliance thereon. *Young Men's Christian Ass'n* v. *Estill*, 140 Ga. 291, 78 S. E. 1075. Other cases find consideration for the subscriber's promise in promises of other subscribers, in an implied promise to apply funds properly, in efforts to obtain additional subscriptions, or in inducing of other subscriptions thereby. *Petty* v. *Trustees of Church*, 95 Ind. 278; *Troy Academy* v. *Nelson*, 24 Vt. 189; *Keuka College* v. *Ray*, 167 N. Y. 96, 60 N. E. 325; *Irwin* v. *Lombard University*, 56 Ohio St. 9, 46 N. E. 63. Some, agreeing with the English view, deny recovery altogether. *In re Hudson*, 54 L. J. Ch. 811; *Montpelier Seminary* v. *Smith's Estate*, 69 Vt. 382, 38 Atl. 66. A charitable subscription is clearly a promise to make a gift, without legal consideration. Nevertheless it seems unfair to allow the subscriber to avoid his solemn promise, in reasonable reliance on which liabilities have been incurred. And courts confronted with this dilemma will continue to hold the subscription legally enforceable. Promissory estoppel generally operates only to support a waiver. *Schroeder* v. *Young*, 161 U. S. 334. See 1 WILLISTON, CONTRACTS, § 139. But two cases have made it the basis of liability to an individual. *Ricketts* v. *Scothorn*, 57 Neb. 51, 77 N. W. 365; *Switzer* v. *Gertenbach*, 122 Ill. App. 26. And some have held it the foundation of liability for charitable subscriptions. *Beatty* v. *Western College*, 177 Ill. 280, 52 N. E. 432. Its uniform recognition in this field would harmonize the decisions and substitute truth for fiction in the opinions.

TAXATION — INCOME TAX LAW OF 1913 — DEDUCTION FOR LOSSES "INCURRED IN TRADE." — Plaintiff, a member of a firm of cotton bag manufacturers, conducted a series of transactions on his own account on the cotton exchange, extending over more than three years, and resulting in a large financial loss. On his income tax returns for 1913 and 1914 he deducted these losses, under the provision permitting deduction for "losses actually sustained during the year, incurred in trade. . . ." (38 STAT. AT L. 167.) Defendant, as internal revenue collector, assessed an additional tax upon these deductions, relying upon a Treasury Department ruling to the effect that the term "in trade" was to be held to apply only to the trade or trades in which the person was engaged, investing money and devoting at least a part of his time and attention, and not to isolated transactions. (TREASURY DECISION 2090, Oct. 14, 1914.) Plaintiff paid the tax under protest, and brought this action to recover the money paid. *Held*, that the plaintiff could not recover. *Mente* v. *Eisner*, 266 Fed. 161 (C. C. A.).

It seems on its face inconsistent to hold profits from speculation in stocks or commodities taxable as part of a man's gross income, and to allow no deduction for losses. But such profits are clearly taxable under the statute. See 38 STAT. AT L. 167. The deductions to be made therefrom are, under the Sixteenth Amendment, entirely within the discretion of Congress. The courts can therefore do no more than construe the words, "incurred in trade." In the present case, "trade" was taken to mean the business by which a man earns his livelihood, which is a definition sometimes employed. See *Woodfield* v. *Colzey*, 47 Ga. 121, 124; *People* v. *Warden of City Prison*, 144 N. Y. 529, 538, 39 N. E. 686, 689. But this is using the word in the sense of *a* trade, as synonymous with calling or occupation. See *Topeka* v. *Jones*, 74 Kan. 164, 166, 86

Pac. 162, 163. "Trade" has usually, however, been more broadly defined as buying and selling, or any dealing by way of sale or exchange. See *May* v. *Sloan*, 101 U. S. 231, 237; *Doe* v. *Bird*, 2 A. & E. 161, 166. See also 3 BOUV. L. DICT. 3290. This definition has been held to apply to a single transaction. *United States* v. *Douglas*, 190 Fed. 482. There seems to be nothing in the act to show that Congress intended the narrower interpretation, especially in view of the fact that by a later statute, such losses may be deducted under a provision permitting deduction for all losses incurred in "any transaction entered into for profit." See 40 STAT. AT L. 1067.

TAXATION — PARTICULAR FORMS OF TAXATION — TRANSFER TAX: TRANSFER TO CHILDREN UNDER ANTENUPTIAL AGREEMENT. — A and B made an antenuptial agreement whereby, on the death of either, leaving issue, said issue were to take one third of the community property. A died. His children claim that the transfer to them under the agreement is not taxable under the New York Taxable Transfers Act. (1909 NEW YORK LAWS, c. 62; CONSOL. LAWS, c. 60, Art. 10.) *Held*, that the transfer is not taxable. *Matter of Schmoll*, 191 App. Div. 435, 181 N. Y. Supp. 542.

For a discussion of the principles involved in this case, see NOTES, p. 198, *supra*.

BOOK REVIEWS

PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY. By Various Authors. Continental Legal History Series, Vol. XI. Boston: Little, Brown, and Company. 1918.

For American purposes this is the most useful volume in a useful series. In the first two chapters (by Alvarez) the philosophical ideas which underlay our American Bills of Rights, as well as the French legislation of 1804, and the later modes of thought which characterized the maturity of law in the nineteenth century both in Europe and in America, are set forth clearly in convenient form. The thoughtful reader who can apply to the text his own knowledge of nineteenth-century American law will find much to aid him in understanding our law as it was a generation ago. Also he will find much material for reflection in such phenomena as the text of the French Civil Code of 1804 making liability a corollary of fault and the rise of liability without fault in recent years (pp. 58–61).

Chapter 3, "Changes of Principle in the Field of Liberty, Contract, Liability and Property," translated from Duguit's *Transformations du droit privé depuis le code Napoléon*, is a book in itself and deserves the most careful reading by American lawyers. The belief of lawyers in the first half of the last century "that law was an exact system, commanding adherence with the same rigor and unassailable logic as a system of geometry" (67), the breakdown of the word "right" as a legal conception (70), the functional idea of duty (73), the rise of legal limitations upon individual activity imposed in the interest of the individual (80), — all these things are as manifest and as significant in our law as in French law. In the last century there was a persistent attempt to force the common law of contracts into a Romanist mold, to state common-law relational doctrines in terms of "implied contract," to make tort liability depend upon culpability, in short to make the individual will the central point in our legal theory. Partly this resulted from a natural turning to the civilians for systematic ideas in view of the poverty of our law in this respect. Even more